

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
THE HIPSAVER COMPANY, INC.,

Plaintiff,

v.

J.T. POSEY COMPANY,

Defendant.  
\_\_\_\_\_

AND RELATED COUNTERCLAIM.  
\_\_\_\_\_

)  
) Civil Action No. 05-10917 PBS  
)

)  
) ORAL HEARING REQUESTED  
)

**EMERGENCY MOTION OF J.T. POSEY COMPANY, INC. FOR  
SANCTIONS FOR FAILURE TO PRODUCE**

J.T. Posey Company, Inc. ("Posey") hereby moves the Court on an emergency basis for an order imposing sanctions on The HipSaver Company, Inc. ("HipSaver") for failure to comply with the Court's order requiring HipSaver to produce copies of its 2004-2006 invoices.

Specifically, Posey requests that the Court dismiss HipSaver's complaint. In the alternative, Posey requests that the Court preclude HipSaver from offering at trial any evidence that purports to reflect what is contained in its 2004-2006 invoices, including evidence of its 2004-2006 sales.

This motion is made pursuant to Rule 37(b)(2) on the grounds that, at the final pretrial conference, the Court ordered HipSaver to produce its 2006 invoices, that HipSaver has not done so and that Posey is being prejudiced by HipSaver's failure to produce the requested information.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I hereby certify that on May 31, 2007, I conferred with counsel for HipSaver by telephone in a good faith attempt to resolve or narrow the issues presented by the instant motion, but that we were unable to do so.

Dated: May 31, 2007

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg

Jeffrey G. Sheldon (CA Bar No. 67516)

Douglas H. Morseburg

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**CERTIFICATE OF SERVICE**

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

May 31, 2007

/s/ Donald K. Piper

Donald K. Piper